

Date February 9, 2015

**HOLD HEARING FOR VACATION OF A PORTION OF LOCUST STREET RIGHT-OF-WAY ADJOINING 400 LOCUST STREET, AND FOR APPROVAL OF A PERMANENT EASEMENT WITH THE DES MOINES AREA REGIONAL TRANSIT AUTHORITY FOR PLACEMENT OF A BUS SHELTER ON THE VACATED CITY RIGHT-OF-WAY**

**WHEREAS**, Des Moines Area Regional Transit Authority (hereinafter "DART") wishes to acquire a permanent easement on a portion of City right-of-way located north of and adjoining 400 Locust Street, as legally described below ("Easement Area"), for the purpose of constructing, operating and maintaining a DART bus stop shelter; and

**WHEREAS**, DART and the City Real Estate Division have negotiated the terms of the permanent easement which include: (1) DART's installation and use of the Bus Shelter shall comply with all City, State and Federal ordinances and regulations; (2) DART, or its contractors, shall obtain, comply with, and pay all related fees for all necessary permits, and provide required insurance and bond, related to excavation and obstruction of City right-of-way upon and above the Easement Area prior to accessing the Easement Area, and, except in the case of emergency, access to the Easement Area shall be limited to the times set forth in such permits; (3) the bus shelter shall be constructed and installed in accordance with plans and specifications approved by the City Engineer or designee, and DART shall certify to the City that the bus shelter has been constructed and located within the Easement Area as shown on the approved plans and specifications; (4) DART shall be solely responsible for all activities related to and costs of maintenance of the Easement Area and installation, operation, maintenance and repair of the bus shelter, in accordance with City ordinances, policies and regulations, and State law; and

**WHEREAS**, such portion of City right-of-way located north of and adjoining 400 Locust Street, as legally described below, has been determined by the City Engineer and City Traffic Engineer to have no significant impact upon the public use of Locust Street, and the City will not be inconvenienced by the vacation and conveyance of said permanent easement; and

**WHEREAS**, on January 26, 2015, by Roll Call No. 15-0103, it was duly resolved by the City Council that the proposed vacation and proposed conveyance of such permanent easement be set down for hearing on February 9, 2015, at 5:00 p.m., in the City Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate a portion of City right-of-way located north of and adjoining 400 Locust Street and convey the proposed easement therein was given as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in said proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:



**Roll Call Number**

15-0235

**Agenda Item Number**

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**Date** February 9, 2015

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the permanent easement for bus shelter encroachment in such vacated right-of-way as described below are hereby overruled, and the hearing is closed.
2. There is no public need or benefit for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of a portion of City right-of-way located north of and adjoining 400 Locust Street, legally described as follows, and said vacation is hereby approved:

A PART OF THE LOCUST STREET RIGHT OF WAY LYING NORTH OF BLOCK 23, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF SAID BLOCK 23; THENCE NORTH ALONG THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 1, A DISTANCE OF 11.78 FEET; THENCE EAST AND PARALLEL TO THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 7.13 FEET TO THE POINT OF BEGINNING; THENCE NORTH AND PARALLEL TO SAID NORTHERLY EXTENSION, 10 FEET; THENCE EAST AND PARALLEL TO SAID NORTH LINE OF LOT 1, A DISTANCE OF 42 FEET; THENCE SOUTH AND PARALLEL TO SAID NORTHERLY EXTENSION, 10 FEET; THENCE WEST AND PARALLEL TO SAID NORTH LINE OF LOT 1, A DISTANCE 42 FEET TO THE POINT OF BEGINNING.

3. That the sale and conveyance of an easement in such vacated right-of-way as described below, to Des Moines Area Regional Transit Authority for \$200, together with payment by said grantee of the estimated publication and recording costs for this transaction, be and is hereby approved, subject to the negotiated terms of the permanent easement as set forth herein above:

A PART OF THE VACATED LOCUST STREET RIGHT OF WAY LYING NORTH OF BLOCK 23, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF SAID BLOCK 23; THENCE NORTH ALONG THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 1, A DISTANCE OF 11.78 FEET; THENCE EAST AND PARALLEL TO THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 7.13 FEET TO THE POINT OF BEGINNING; THENCE NORTH AND PARALLEL TO SAID NORTHERLY EXTENSION, 10 FEET; THENCE EAST AND PARALLEL TO SAID NORTH LINE OF LOT 1, A DISTANCE OF 42 FEET; THENCE SOUTH AND PARALLEL TO SAID NORTHERLY EXTENSION, 10 FEET; THENCE WEST AND PARALLEL TO SAID NORTH LINE OF LOT 1, A DISTANCE 42 FEET TO THE POINT OF BEGINNING.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Easement for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

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5. Upon final passage of an ordinance vacating said rights-of-way, and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Easement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded following closing.
6. In accordance with the terms set forth in the Offer to Purchase, the Real Estate Division Manager is authorized and directed to close on the sale and forward the original of the Easement, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Easement and copies of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

Moved by Hensley to adopt.

APPROVED AS TO FORM:

[Signature]  
 Cori Kuhn Coleman, Assistant City Attorney

*per*

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED 7 APPROVED  
T.M. Franklin Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Diane Rauh City Clerk